



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 5412-01
17 August 2001



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 July 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the rationale of the hearing panel of the Physical Evaluation Board which considered your case on 7 August 1990, a copy of which is attached. The fact that you have been awarded Department of Veterans Affairs (VA) disability benefits is not probative of the existence of error or injustice. In this regard, the Board noted that the VA awards benefits without regard to the issue of fitness for military duty at the time a period of active service is terminated. As you have not demonstrated that you were unfit for duty on 1 May 1986, or that you became unfit as a proximate result of performing duty in the Naval Reserve, the Board was unable to recommend any corrective action in your case. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

SAN DIEGO HEARING PANEL RATIONALE
IN THE CASE OF
[REDACTED]

This member appeared before the Panel on 7 August 1990 requesting to be found unfit for duty and rated at 30% disability.

The Record Review Panel found the member Not Physically Qualified for retention in the United States Naval Reserve on 15 May 1990 because of physical disability.

1. Degenerative spine disease, 73390
2. Degenerative disc disease, 7226
3. Congenital lumbar spinal stenosis, 72402
4. Bilateral chronic ankle instability, 71887
5. Sural nerve laceration, left ankle, 9093

The members of the Hearing Panel, after hearing all verbal testimony of the member, reviewing records and all other applicable documentary evidence, concluded: The Hearing Panel agrees with the Record Review Panel.

[REDACTED] has a long history of back pain and bilateral ankle laxity. He was found fit for duty in 1981 regarding his back after an active duty injury. He has been a reservist since February 1986 when he left active duty -- and was fit for full duty at that time. A back reinjury occurred in 1989 (as a civilian).

The members of the Panel agree [REDACTED] is Not Physically Qualified for retention in the Naval Reserves due to the back impairment that prevents him from performing the duties of his rank. A NOE was denied and the conditions are therefore not considered for benefits. Further, disability benefits are not authorized for members or former members of the armed forces after discharge or release from active duty because of physical disability, even though the origin of the disability may be related to a period of active duty or inactive duty training. (DEM Paragraph 1009.) No mistake of law occurred.